

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

EDGAR R GARCIA,

Plaintiff,

v.

PATRICK GLEBE,

Defendant.

CASE NO. 3:14-CV-05990-RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR: August 14, 2015

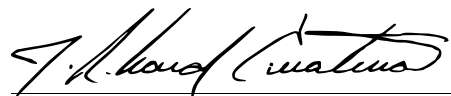
The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

Defendant filed the pending motion to dismiss on February 27, 2015, asserting that plaintiff's complaint failed to state a claim upon which relief could be granted. Dkt. 11. After the motion to dismiss was filed, plaintiff filed a motion to supplement the record. Dkt. 17. In a separate order, the Court denied plaintiff's motion to supplement the record but granted plaintiff leave to file an amended complaint. *See* Dkts. 17, 20.

1 An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d  
2 1258, 1262 (9th Cir. 1992). The original complaint is “treated thereafter as non-existent.” *Loux v.*  
3 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) *overruled on other grounds by Lacey v. Maricopa County*,  
4 693 F.3d 896 (9th Cir. 2012). Defendant’s motion to dismiss attacks the original complaint,  
5 which will be “non-existent” because plaintiff was granted leave to file an amended complaint.  
6 Accordingly, the undersigned recommends that defendant’s motion to dismiss (Dkt. 11) be  
7 denied as moot. The Court notes defendant has the right to renew his motion to dismiss at the  
8 appropriate time.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
10 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
11 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
12 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time  
13 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on August  
14 15, 2015, as noted in the caption.

15 Dated this 20<sup>th</sup> day of July, 2015.

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18 J. Richard Creatura  
19 United States Magistrate Judge  
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